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HUMAN RIGHTS IN NIGERIA'S EXTERNAL RELATIONS: EXIGENCY, METHODS, AND REBUTTABLE OBJECTIONS

Philip C. Aka*

INTRODUCTION AND PURPOSE OF STUDY

Realist thinkers view the application of human rights in external relations as an exercise in sheer futility¹ that also deflects attention from the singular pursuit of national interest, governed by power.² For these reasons, realists advise states to forebear the integration of moral principles such as human rights into international relations—an arena that they tirelessly remind policymakers and critics is marked by *anarchy*, the absence of cen-

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1. George Kennan, a contemporary realist thinker and an architect of U.S. post-World War II foreign policy, likened the U.S. government’s attempt to correct “the political habits of large parts of the world’s population” to “tilting against the windmills.” JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 29-30 (Westview Press, 4th ed. 2013) (citing three works Kennan published from 1954 to 1986). Kennan opined that misgovernment has been and will always remain “the common condition of most of mankind.” *Id.* at 29.

2. See HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* 107-70 (Alfred A. Knopf ed., 5th ed. 1978) (discussing the “essence of national power” and its various elements, including geography, natural resources, industrial capacity, military preparedness, population, national character, national morale, quality of diplomacy, and quality of government).

tralized authority at the world level necessary to enforce compliance among states.³ Despite these pointed warnings, human rights-based policies nevertheless emerged⁴—partly because states occasionally find it in their strategic national interests to pursue those policies, or because, on more principled grounds, they choose to redefine their national interests to conform to human rights values.⁵

Human rights are guarantees, rooted in human dignity (rather than in religion or abstract philosophy), that people, qua human beings, have irrespective of where they live in the world; whether in a “land of opportunity” like the United States, or one materially destitute, such as Somalia.⁶ There are over three dozen of these rights distilled from the international bill of human rights.⁷ Many discussions on human rights echo the tenets of West-

3. See BRIAN C. SCHMIDT, *THE POLITICAL DISCOURSE OF ANARCHY: A DISCIPLINARY HISTORY OF INTERNATIONAL RELATIONS* (State Univ. of New York Press, 1998); see also JACK DONNELLY, *REALISM AND INTERNATIONAL RELATIONS* (Cambridge Univ. Press 2000) (depicting realism as an insightful yet one-sided theory).

4. See generally ALISON BRYSK, *GLOBAL GOOD SAMARITANS: HUMAN RIGHTS AS FOREIGN POLICY* (Oxford Univ. Press, 2009) (profiling a set of six countries plus a coalition of groups that consistently apply human rights in their external affairs); see also DAVID P. FORSYTHE, *HUMAN RIGHTS IN INTERNATIONAL RELATIONS* (Cambridge Univ. Press, 3d ed. 2012); Jimmy Carter, *The American Road to a Human Rights Policy*, in *REALIZING HUMAN RIGHTS: MOVING FROM INSPIRATION TO IMPACT* 49-61 (Samantha Power & Graham Alison eds., St. Martin's Press, 2000); Kathryn Sikkink, *The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe*, *IDEAS AND FOREIGN POLICY: BELIEFS, INSTITUTIONS, AND POLITICAL CHANGE* 139-169 (Judith Goldstein & Robert O. Keohane eds., Cornell Univ. Press, 1993).

5. Donnelly complains that through their “categorical attacks on morality in foreign policy,” realists “wildly” elevate “[a] valuable caution against moralistic excess” in international politics “into a general principle of politics.” DONNELLY, *supra* note 1, at 30.

6. See generally MICHAEL IGNATIEFF ET AL., *HUMAN RIGHTS AS POLITICS AND IDOLATRY* (Princeton Univ. Press 2001) (lecture series on human rights involving a keynote by Ignatieff and responses to his address that include more or less incisive comments by four scholars); see also DONNELLY, *supra* note 1, at 19-23; Louis Henkin, *Human Rights: Ideology and Aspiration, Reality and Prospect*, in *REALIZING HUMAN RIGHTS*, *supra* note 4, at 5. The historiography of modern human rights has many sources. See, e.g., PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN* 5-42 (Univ. of Pennsylvania Press, 2011).

7. See DONNELLY, *supra* note 1, at 7. Instruments comprising the international bill of human rights are the Universal Declaration of Human Rights, UDHR (1948), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. The last two came into force in 1976. Some commentators include the U.N. Charter (1945), the first instrument ever to use the lan-

ern liberalism, embedded in Mill's famous proposition that "[o]ver himself, over his own body and mind, the individual is sovereign."⁸ However, *human rights* are not limited to individual rights. Instead, these rights also encompass complementary rights of groups, signified, for example, by the right to self-determination, equally contained in the international bill of human rights.⁹ Abusive state policies in Nigeria and other Africa countries put groups at risk.¹⁰ Accordingly, "[n]o strategy for human rights promotion in Nigeria will succeed that does not pay strong attention to group rights."¹¹ At any rate, "[g]roup rights have always been critical in Nigeria"; in fact, the fear of majority domination by minority groups was the factor that led

guage of human rights, among the documents of the international bill of human rights. The UDHR sets forth "common standards of achievement for all peoples and all nations" that the two human rights covenants, as binding multilateral treaties, then elaborated. Additionally, over the years, the UDHR garnered such authoritativeness that today some international law scholars consider it as customary international law. See Henkin, *supra* note 6, at 12.

8. THE BASIC WRITINGS OF JOHN STUART MILL: ON LIBERTY, THE SUBJECTION OF WOMEN, AND UNILATERALISM 3-97 (Modern Library 2002).

9. Two instruments of the international bill of rights that "guarantee" the right to self-determination are the ICCPR, and the ICESCR. See International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, Art. 1 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3, Art. 1 [hereinafter ICESCR].

10. Philip C. Aka, *Nigeria Since May 1999: Understanding the Paradox of Civil Rule and Human Rights Violations under President Olusegun Obasanjo*, 4 SAN DIEGO INT'L L. J. 209, 273-74 (2003) (discussing the "complementarity of individual and collective rights").

11. *Id.* at 274. A major component in the advocacy for liberation of groups, such as blacks, women, and indigenous peoples—among others—has been "promoting the identification of the individual with the group." TERENCE BALL ET AL., *POLITICAL IDEOLOGIES AND THE DEMOCRATIC IDEAL* 234 (Pearson, 9th ed. 2014). Rather than run parallel to each other, sometimes the two rights meet like two sides of the same coin. Take African Americans as example. The integrationist or assimilationist approach pursued by the Rev. Dr. Martin Luther King Jr. insisted that Blacks "be treated first and foremost as individuals, with the same rights and liberties as the other individual members of society." *Id.* at 235. In contrast, the separat(ion)ist or nationalist worldview espoused by Malcolm X and others advocated that "integration is not the solution to the problems that confront black people in white-dominated societies." *Id.* at 236. Instead, "[t]he first and most important task, in their view, is to build racial pride and economic self-sufficiency among black people—something that can be done only if [B]lacks recognize that they are not merely individuals but members of a distinct community, nation, or people." *Id.*

to the enshrinement of "fundamental rights" in the country's 1960 Constitution and subsequent ones.¹²

A country has a human rights-based policy when the country in question "has explicit mechanisms for integrating human rights concerns into foreign policy and when those mechanisms have modified foreign policy decisions in some cases."¹³ Stated differently, for states that chose to apply human rights in their external relations, "we can reasonably demand that human rights actually enter into calculations balancing competing interests, with a weight that roughly matches their stated place in the hierarchy of national interests."¹⁴ While application of human rights in external relations comes in a variety of forms that mimic their expression in domestic life, indicators of this application include multilateral engagements, such as the number of human rights treaties ratified, voluntary funding for the United Nations Office of the High Commissioner for Human Rights, and whether the country lost aid or refused to sign bilateral immunity agreement; bilateral engagements, such as state-to-state diplomacy, sanctions, mediations, and exchanges involving human rights; as well as the quantity and quality of economic aid; the affected state's contributions to peace; and its policy on refugees,¹⁵ among others.¹⁶

12. Aka, *supra* note 10, at 274.

13. Sikkink, *supra* note 4, at 143.

14. DONNELLY, *supra* note 1, at 146. This configuration is not as stringent as it looks at first. This is because, as Professor Donnelly pointed out elsewhere, commenting on U.S. foreign policy, the key point is to assess "the impact of the full range of . . . foreign policy behavior on international human rights practices, not just those initiatives that explicitly address human rights." Jack Donnelly & Debra Liang-Fenton, *Introduction*, in *IMPLEMENTING U.S. HUMAN RIGHTS POLICY* 3, 6 (Debra Liang-Fenton ed., United States Institute of Peace Press, 2004).

15. BRYSK, *supra* note 4, at 24-26; DAVID GILLES, *BETWEEN PRINCIPLES AND PRACTICE: HUMAN RIGHTS IN NORTH-SOUTH RELATIONS* 49 (McGill-Queen's Univ. Press, 1996). Since the Second World War, the international community has favored the establishment of a permanent judicial tribunal for punishment of heinous offenses: genocide, war crimes, and crimes against humanity. When the International Criminal Court ("ICC") finally came into existence in July of 2002, the U.S. under George W. Bush was unalterably opposed to it, even though American officials participated in the drafting of the Rome Statute that established the Court. The U.S. government voiced the fear that U.S. nationals could be tried by the Court, impelling the Bush administration to negotiate so-called bilateral immunity agreements ("BIAs") with countries designed to exempt U.S. peacekeepers from the ICC's jurisdiction. As of December 2006, the Department of State reported the signature of 102 of such agreements. Countries who failed to sign these agreements risked reduction or loss of U.S. assistance. Under President Barack Obama, the U.S. government has expressed an intention to reduce its hostility toward the ICC and has removed some of the sanctions attached to the BIAs but has yet to make a formal policy decision on the ICC or the status of the BIAs. *See*

Like many other countries in the world, Nigeria applies human rights in its external relations. Nigeria participated actively in the liberation struggles in Africa that culminated with the achievement of majority rule in South Africa in 1994;¹⁷ has a passion for peacekeeping operations that goes back to the early days of its independence;¹⁸ eschews the use of force in resolving conflicts with neighbors;¹⁹ has a history of ratifying international

generally JASON RALPH, *DEFENDING THE SOCIETY OF STATES: WHY AMERICA OPPOSES THE INTERNATIONAL CRIMINAL COURT AND ITS VISIONS OF WORLD SOCIETY* (Oxford Univ. Press, 2007); Coalition for the International Criminal Court, *Status of U.S. Bilateral Immunity Agreements*, at http://www.iccnw.org/documents/CICCFS_BIAstatus_current.pdf (last modified Dec. 11, 2006); Human Rights Watch, *Bilateral Immunity Agreements* (June 25, 2003), at <http://www.hrw.org/legacy/campaigns/icc/docs/bilateralagreements.pdf>.

16. For a more elaborate enumeration of these tools, focusing on the U.S., see Donnelly & Liang-Fenton, *supra* note 14, at 10 (listing seven of these tools as: private diplomacy; public diplomacy; cultural, scholarly, and other exchanges and contacts; economic and political sanctions and incentives; democracy promotion; the *Country Report on Human Rights Practices*; and Congressional actions (such as hearings, laws, and nonbinding resolutions)); Debra Liang-Fenton, *Conclusion: What Works?*, in *IMPLEMENTING U.S. HUMAN RIGHTS POLICY*, *supra* note 14, 435, 436-48 (spotlighting nine of such tools, including symbolic actions, and the media).

17. Bonn O. Nwanolue & Victor C. Iwuoha, *A Reflection on Nigeria's Past: Africa as the Centerpiece of Nigeria's Foreign Policy Revisited*, 2 *DEVELOPING COUNTRY STUDIES* 78-79 (2012), available at <http://www.iiste.org/Journals/index.php/DCS/article/view/1756/1709>.

18. See generally ADEKEYE ADEBAJO, *LIBERIA'S CIVIL WAR: NIGERIA, ECOMOG, AND REGIONAL SECURITY IN WEST AFRICA* (Lynne Rienner Publishers, 2002); FUNMI OLONISAKIN, *REINVENTING PEACEKEEPING IN AFRICA: CONCEPTUAL AND LEGAL ISSUES IN ECOMOG OPERATIONS* (Kluwer Law Int'l, 2000); FESTUS UGBOAJA OHAEGBULAM, *NIGERIA AND THE UNITED NATIONS MISSION TO THE DEMOCRATIC REPUBLIC OF THE CONGO: A CASE STUDY OF THE FORMATIVE STAGES OF NIGERIA'S FOREIGN POLICY* (Univ. Press of Florida, 1982). Peacekeeping was the issue that Nigeria used to cut its teeth in foreign policy making. See generally OHAEGBULAM, *supra*.

19. Nigeria's 1999 Constitution includes peaceful "settlement of international disputes" among the foreign policy objectives of the country. Constitution of the Federal Republic of Nigeria, (1999), § 19(d), available at <http://www.nigeria.gov.in/ConstitutionOfTheFederalRepublicOfNigeria.htm>. Constitutional provision aside, Nigeria has a reputation as a gentle giant that never uses force to settle a dispute with a neighbor, even when pushed to the point of provocation. For example, for many years, the country had a boundary dispute with Cameroon over Bakassi, an oil-rich peninsula that both countries claimed. Skirmishes erupted occasionally from the Cameroonian side that at times involved the death of Nigerians, but the country never responded in kind. Ultimately the dispute was settled via a lawsuit at the International Court of Justice that awarded the peninsula to Cameroon. In spite of pressures from many Nigerians at home and abroad displeased with the judgment, Nigeria, under the presidency of Olusegun

human rights treaties;²⁰ and, since 1987, has operated a Technical Aid Corp (TAC) scheme designed to extend bilateral economic assistance to African and Caribbean countries.²¹

Going forward, since 1999, under the Fourth Republic, and in the wake of the “turn toward pluralism” in Africa,²² part of the outbreak of democratization since the last quarter of the twentieth century,²³ Nigerian leaders have played a critically instrumental role in the New Partnership for Africa’s Development (“NEPAD”). NEPAD presages a new kind of cooperative arrangement between African countries and outside donors, embedded in good governance, democracy, and human rights,²⁴ “that embodies

Obasanjo from 1999 to 2007, obeyed the judgment. *See Nigeria Cedes Bakassi to Cameroon*, BBC NEWS, Aug. 14, 2008, <http://news.bbc.co.uk/2/hi/africa/7559895.stm>. About 90% of the peninsula’s population, estimated at about 300,000 people, is made up of Nigerian fishermen. The U.N. Secretary General, Ban Ki-Moon, praised the peaceful transfer as “a model for negotiated settlements of border disputes.” *Id.* In short, Nigeria tends to limit its use of violence within its borders, rather than extend it overseas.

20. *See* University of Minnesota, Human Rights Library, Ratification of International Human Rights Treaties—Nigeria, <http://www1.umn.edu/humanrts/research/ratification-nigeria.html> (last visited Feb. 26, 2015) [hereinafter University of Minnesota] (listing various categories of instruments Nigeria ratified from 1960 to 2012). However, the country’s 1999 constitution forbids the enforcement of treaties that have not been enacted into law by the national legislature, a process fraught with long delay, and the country ratifies treaties, such as the Geneva Conventions, that it makes little effort to comply with. *See* Babatunde Isaac Olutoyin, *Treaty Making and Its Application under Nigerian Law: The Journey So Far*, 3 INT’L J. BUS. & MGMT. INVENTION 7 (2004), <http://www.ijbmi.org/papers/Vol%283%293/Version-3/B033307018.pdf>; *see also* Chinedum Odenyi, *The Domestic Implementation of International Treaties in Nigeria*, NCICC NEWS, July 23, 2014, <http://www.ncicc.org.ng/.php/latest/83-the-domestic-implementation-of-international-treaties-in-nigeria> (focusing on the country’s implementation of the Rome Statute that established the International Criminal Court).

21. Amb U.A. Baraya, *New Strategy for the Implementation of the Building Block on South-South Cooperation: Learning from the Nigerian Experience*, available at cso-effectiveness.org/IMG/pdf/document_nigeria.pdf.

22. Paul N. Ndue, *Africa’s Turn toward Pluralism*, 1 J. DEMOCRACY 45-54 (1994).

23. SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (Univ. of Oklahoma Press 1991). Huntington identifies three “waves of democracy”: the first took place from 1828 to 1926, cresting between 1922 and 1942 when a “reverse wave” occurred; the second took place from 1943 to 1962, cresting from 1958 to 1975 when another “reverse wave” occurred; and the third (and still ongoing) wave took place in 1974. *See id.* at 13-26.

24. Philip C. Aka, *NEPAD and the Movement for Popular Participation in Development (MPPD) in Africa*, 3 HUM. RTS. & GLOBALIZATION L. REV. 79, 115-22 (2009-2010).

the vision and aspirations of African Governments and their peoples for development.”²⁵

Building on the auspicious foundation we recount, Nigeria can do more to increase the role of human rights in its external affairs while contributing to the international human rights regime. In the post-Cold War period, “[m]any states have made substantial progress toward a more serious incorporation of human rights into their foreign policy[.]” but many too “could readily do more.”²⁶ One of those laggards needing to do more is Nigeria. This Article provides evidence to support this conclusion and outlines some methods Nigeria could use to achieve a human rights-based foreign policy. It also addresses the possible objections to the argument for increased application of human rights in Nigerian foreign policy that this Article embodies.

I. EXIGENCY

This section highlights various reasons why Nigeria should infuse its external relations with more human rights-based policies. The list illustrates rather than exhausts the possibilities for a complicated country like Nigeria.

The first relates to Nigeria’s origins rooted in human rights. In many respects, Nigeria is a state *invented* by human rights, as former U.S. President Jimmy Carter once observed regarding the United States.²⁷ Human rights concerns substantially influenced the birth and subsequent evolution of the country. The territory known today as Nigeria was once named the *Slave Coast*, in testament to the immense slave activities that took place there for hundreds of years.²⁸ The occupation and subsequent colonization of Nigeria was an attempt to stop these activities and to set in motion legitimate commercial and economic activities that would replace the obnoxious trade in humans.²⁹ Certain dignitaries affiliated with regions that became

25. *Id.* at 81.

26. DONNELLY, *supra* note 1, at 147.

27. Carter, *supra* note 4, at 49 (“In 1981, as I left the U.S. presidency, I said, ‘America did not invent human rights. In a very real sense . . . human rights invented America.’”).

28. See *Slave Coast*, ENCYCLOPEDIA BRITANNICA, available at <http://www.britannica.com/EBchecked/topic/548212/Slave-Coast>; *Slavery Fact Sheets*, DIGITAL HISTORY, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=11&psid=3807; ROBIN LAW, *THE SLAVE COAST OF WEST AFRICA 1550-1750: THE IMPACT OF THE ATLANTIC SLAVE TRADE ON AN AFRICAN SOCIETY* (Clarendon Press, 1991).

29. See JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (Oxford Univ. Press 2011) (tracing modern-day international human rights law to the anti-slavery movement of the 19th century).

subsumed into present-day Nigeria, such as the former Igbo slave, Olaudah Equiano, participated in this anti-slavery campaign.³⁰

Moreover, although colonial rule marks a colossal assault on human rights of every category, beginning with the right to self-determination,³¹ events in the later leg of British rule in Nigeria, especially after World War II and the formation of the U.N. system, helped give rise to Nigeria's non-violent independence in 1960.³² The "protracted negotiations with British colonial power[.]"³³ short of the violent blow-out elsewhere,³⁴ became arguably possible due to the mellowing influence of human rights.³⁵ To whom much is given, much is expected. A country birthed by human rights like

30. OLAUDAH EQUIANO, *THE INTERESTING NARRATIVE OF THE LIFE OF OLAUDAH EQUIANO: WRITTEN BY HIMSELF* (Edited with an intro. by Robert J. Allison, Bedford/St. Martin's Press, 1995 [originally published 1789]). Some controversy arose recently regarding whether Equiano was born in Igboland or in the U.S., see Gloria Chuku, *Olaudah Equiano and the Foundation of Igbo Intellectual Tradition*, in *THE IGBO INTELLECTUAL TRADITION: CREATIVE CONFLICT IN AFRICAN AND AFRICAN DIASPORIC THOUGHT* 33, 34-50 (Gloria Chuku ed., Palgrave Macmillan, 2013), but none regarding whether he was Igbo.

31. There is no attempt here to minimize the destructive effect of colonial rule on its victims, including the distortion of the economic life of a people that is part of the legacy of that experience. See Philip C. Aka, *The Military, Globalization, and Human Rights in Africa*, 18 N.Y.L. SCH. J. HUM. RTS. 361, 377-82 (2002) (detailing the violations of human rights that occurred during European colonial rule in Africa).

32. See Henkin, *supra* note 6, at 12 (stating that "[o]ne might trace a path from the [Universal Declaration of Human Rights] to historic developments in the second half of the century," including the "end of colonialism and the proliferation of new states," and the "eradication of apartheid" and the birth of black majority rule in South Africa).

33. MAE C. KING, *BASIC CURRENTS OF NIGERIAN FOREIGN POLICY* 16 (Howard Univ. Press, 1996).

34. Kenya serves as an example of a violent decolonization during this period. See MARTIN MEREDITH, *THE FATE OF AFRICA: A HISTORY OF THE CONTINENT SINCE INDEPENDENCE*, revised and updated edition, 79-87 (Public Affairs 2011) (commenting on the Mau Mau insurgency).

35. For example, by 1954, several years before independence in 1960, British authorities transferred authority for foreign affairs to Nigerians. Joseph Effiong, *Reflections on Nigeria's Foreign Policy*, 5 J. SOCIAL & PSYCHOLOGICAL SCIENCES (2012), available at <http://www.questia.com/read/1G1-314443206/reflections-on-nigeria-s-foreign-policy>. It is arguable too that this could possibly be part of the general process of decolonization, begun with the independence of India in 1947. India was "the crown jewel" of British and European colonial possessions. J. TYLER DICKOVICK & JONATHAN EASTWOOD, *COMPARATIVE POLITICS: INTEGRATING THEORIES, METHODS, AND CASES* 520 (Oxford Univ. Press, 2013). India's independence was a shot, heard around the colonial world, that began the unraveling of the European colonial structure, soon feeling its way into Black Africa with the independence in 1957 of Ghana, formerly the Gold Coast.

Nigeria can do more for human rights in external affairs than Nigeria has done so far. It can punch more within its weight, not below it, by contributing more through its word and action to international human rights.

A second reason for injecting more human rights into Nigeria's external relations is that such injection could harmonize Nigeria's domestic and foreign policies, to the benefit of democracy at home, as it has done for countries with human rights-based foreign policies, such as Costa Rica.³⁶ As the partition of the Sudan in 2013 makes clear,³⁷ unabated abuses of human rights can have dire consequences for the integrity of a country. And should Nigeria, like Sudan, disintegrate, due to its piling human rights abuses, successor states from the ashes of the parent state will grapple with the same human rights challenges without the benefit of "a large republic"³⁸ that Nigeria now, for all its incoherence, affords.

Third, infusion of more human rights into Nigeria's foreign relations will also help to build a culture of the rule of law within the country itself. Both figuratively and literally, the rule of law is a key step in the temple of democracy.³⁹ It is a concept encapsulated in the description, for example, of the U.S. system as "a government of laws, not of men."⁴⁰ The concept signifies two mandates: first, that all who hold the reins of power, no matter how highly placed in rank, are under the law, rather than above it; and, second, that the powers of the government to make and enforce laws are subject to legal restraints.⁴¹ In such a system, as Justice Anthony M. Kennedy of the United States Supreme Court indicated, "[t]he Law rests upon known, general principles applicable on equal terms to all persons" and it is

36. BRYSK, *supra* note 4, at 95-118.

37. See Jeffrey Gettleman, *After Years of Struggle, South Sudan Becomes a New Nation*, N.Y. TIMES, July 9, 2011, <http://www.nytimes.com/2011/07/10/world/africa/10sudan.html?pagewanted=1&r=2&hp&adxnnlx=1310234502-5nvX4GUBg0fK28Wp4F>; Iris Seri-Hersch, *From One Sudan to Two Sudans: Dynamics of Partition and Unification in Historical Perspective*, 7 TEL AVIV NOTES, July 9, 2013, available at http://hal.archives-ouvertes.fr/docs/00/91/18/79/PDF/Seri-Hersch_Iris_TA_NOTES_One_to_Two_Sudans_090713.pdf

38. THE FEDERALIST NO. 10 (James Madison).

39. MICHAEL J. SODARO, COMPARATIVE POLITICS: A GLOBAL INTRODUCTION 171-72 (McGraw-Hill, 3d ed. 2008) (including Figure 7.1. on p. 172 depicting the Temple of Democracy with the rule of law, along with "democratic values," as foundational steps supporting the three pillars of "popular sovereignty," "rights and liberties," and "economic well-being.").

40. *Id.* at 177.

41. *Id.*

“superior to, and thus binds, the government and all of its officials.”⁴² The connection between human rights and the rule of law is indicated by the fact, for example, that the strictures and mandates of the rule of law forbid the government from engaging in arbitrary practices that signify abuse of its powers, such as unlawful arrest, torture, kangaroo or fraud trials, corruption, and the like.⁴³ An independent judiciary is a critical monitor in a system based on the rule of law.⁴⁴

Fourth, given their legendary passion for international relations,⁴⁵ increased application of human rights in external affairs will give Nigerians and their leaders the opportunity to fashion their relations with foreign countries and conduct business in multilateral settings in a more principled format than is currently the case. For a country with the endowment of Nigeria, including its regional influence, human rights-based policies may be “the most rapid way to improve the lives of” beleaguered citizens of foreign lands.⁴⁶

Finally, Nigeria has the infrastructure to conduct a human rights-based foreign policy, if it rationalizes its resources better. One element of that infrastructure is a sizable population. With over 177 million residents, Nigeria is the most populous country in Africa and the eighth most populous state in the world, after China, India, the European Union (a grouping of numerous countries), the United States, Indonesia, Brazil, and Pakistan, in

42. *Justice Kennedy Address*, CSPAN, (Aug. 5, 2006), www.c-span.org/video/?193757-1/justice-kennedy-address (Keynote Address by Justice Anthony Kennedy at the Meeting of the American Bar Association, Honolulu, HI).

43. SODARO, *supra* note 39, at 177.

44. Philip C. Aka, *Judicial Independence under Nigeria's Fourth Republic: Problems and Prospects*, 45 CAL. W. INT'L L. J. 1, 4 (2014).

45. See TOYIN FALOLA & MATTHEW M. HEATON, *A HISTORY OF NIGERIA* 243-70 (2008) (extended discussion on “Nigeria and Nigerians in world history,” including foreign policy in the period since independence in 1960).

46. HURST HANNUM ET AL., *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 1118 (Wolters Kluwer, 5th ed. 2011). As Professors Hannum and his colleagues elaborate, using the U.S. as example, the attitude of a foreign government toward a regime that is perpetrating human rights abuses “might have far more impact on the lives of people living under that regime than, for example, petitions filed with the United Nations or regional human rights bodies.” *Id.* Yet still on the U.S., see Harold Hongju Koh, *On America's Double Standard: The Good and Bad Faces of Exceptionalism*, AM. PROSPECT A16, A17 (2004) (narrating an anecdote from Koh's childhood involving the overthrown Prime Minister of South Korea who was placed under house arrest and would probably have been executed if not for the global reach to Seoul of U.S. power). Such a disapproving attitude bilaterally can also reinforce initiatives at the multilateral level.

this order.⁴⁷ Its status as “the largest society in Africa”⁴⁸ gives Nigeria an advantage in labor power that countries with smaller populations lack.⁴⁹ However, there are also downsides to this resource, including a low literacy rate,⁵⁰ a massive brain drain to foreign countries of a cream of its educated labor force,⁵¹ and a rapid population growth rate antithetical to economic development.⁵²

47. The World Factbook, *Nigeria*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (last updated June 20, 2014).

48. DICKOVICK & EASTWOOD, *supra* note 35, at 578.

49. See Susan Lund & Arend van Wamelen, *Lions on the Move: 10 Things You Don't Know about Africa's Booming Economy*, in J. TYLER DICKOVICK & JONATHAN EASTWOOD, CURRENT DEBATES IN COMPARATIVE POLITICS 42, 42–43 (Oxford Univ. Press, 2015) (general statements on Africa as a whole that, consistent with the theme of the article, are not limited to just Nigeria).

50. In 2010, the most recent year for which data are available, Nigeria ranked 184 out of 194 countries in literacy, with a literacy rate of 61.3% (measured as persons 15 and above who can read and write), broken down into 72.1% for men and 50.4% for females). See The World Factbook, *Nigeria*, *supra* note 47.

51. See Anya O. Anya, *Nigeria: The Human Capital Challenge*, 30 AFR. J. PHYSICS 5 (2010), <http://sirius-b.ncat.edu.ncat.edu/asn/afps/ajp/ajp-ISOTPAND10/Proc%20ISPD%20book5-30.pdf> (lamenting Nigeria's “failure to develop her human resources,” effects of which include the drain of medical professionals in its educated labor force who migrate to foreign countries); see also David H. Shinn, *Reversing the Brain Drain in Ethiopia* (Nov. 23, 2002), available at <http://chora.virtualave.net/brain-drain8.htm> (address to the Ethiopian North American Health Professionals Association) (disclosing that “[m]ore than 2,000 Nigerian doctors work in the United States even though there continues to be a critical need for health professionals in Nigeria[,]” and that “[a]bout 10,000 Nigerian academics are employed in the United States alone.”).

52. Nigeria's population growth rate of about 3.2% (meaning that the population is projected to double about every 20 years) creates a major economic burden during periods when the rate of population growth outstrips the rate of gross domestic product (“GDP”), as has been the case for much of the country's history. See Elisabeth Rosenthal, *Nigeria Tested by Rapid Rise in Population*, N.Y. TIMES, Apr. 14, 2012, http://www.nytimes.com/2012/04/15/world/africa/in-nigeria-a-preview-of-an-overcrowded-planet.html?pagewanted=all&_r=0. As one Nigerian demographer pointed out in this news-story, economic development is practically out of the question given such rapid rise in population. “Population is key. If you don't take care of population, schools can't cope, hospitals can't cope, there's not enough housing—there's nothing you can do to have economic development.” *Id.* More recently, Nigeria's finance minister indicated that for antipoverty programs to work in the country, as it did in a place like China, “we actually have to grow faster.” Ngozi Okonjo-Iweala, *Reforming Nigeria: A Conversation with Ngozi Okonjo-Iweala*, FOREIGN AFFAIRS (March/April 2014), <http://www.foreignaffairs.com/discussions/interviews/-nigeria>. However, a rapid population growth rate complicates the chances for that “fast” economic growth.

Another element of infrastructure is natural resources where the country is also well-endowed.⁵³ Nigeria is home to the biggest economy in Africa.⁵⁴ Although for long built mostly on petroleum export,⁵⁵ since 1999, the economy has also witnessed significant diversification into service areas,

53. As of January 2013, Nigeria has an estimated 37.2 billion barrels of proven crude oil reserves, the second largest stockpile in Africa after Libya. See U.S. Energy Information Admin., *Nigeria* (Dec. 30, 2013), www.eia.gov/contries/and/analysisbriefs/Nigeria/nigeria.pdf. This does not include other mineral resources, such as natural gas, coal and numerous others like iron ore, uranium, copper, gold, and diamond. See Center for Energy Economics, *Gas Monetization in Nigeria*, http://www.beg.utexas.edu/energyecon/new-era/case_studies/_Monetization_in_Nigeria.pdf; NUHU GEORGE OBAJE, *GEOLOGY AND MINERAL RESOURCES OF NIGERIA* 117-19 (Springer-Verlag, 2009).

54. Based on the figures provided by Nigeria's office of statistics at the end of 2013, Nigeria had a GDP of \$510 billion, compared to South Africa's little over \$370 billion. See *Nigeria Becomes Africa's Biggest Economy*, BBC NEWS (Apr. 6, 2014), <http://www.bbc.com/news/business-26913497> (commenting on the rebasing of the country's GDP); see also *Nigeria: Africa's New Number One*, ECONOMIST.COM (Apr. 12, 2014), available at <http://www.economist.com/news/leaders/21600685-nigerias-suddenly-supersied-economy-indeed-wonder-s-are-its-still-huge>; *Nigeria Becomes Africa's Largest Economy*, AL JAZEERA, Apr. 6, 2014, <http://www.aljazeera.com/news/africa/2014/04/nigeria-becomes-africa-largest-economy-20144618190520102.html>; Michelle Faul, *Nigeria: Economy \$510B, Biggest in Africa*, USA TODAY, Apr. 6, 2014, <http://www.usatoday.com/story/money/business/2014/04/06/nigeria-economy-510-billion-biggest-in-africa/7389395>. The rebasing means that Nigeria included in its GDP calculations, industries like telecom, information technology, music, online sales, airlines, and film production that previously were uncounted. *Nigeria Becomes Africa's Biggest Economy*, BBC NEWS, *supra*. Rebasing is carried out so as to give a nation's GDP statistics the most up-to-date picture of an economy as possible. It is an updating that many countries conduct about once every three years that Nigeria last did in 1990. *Id.* Although with the updating, Nigeria surpasses South Africa as Africa's largest economy, Nigerian citizens do not enjoy a higher standard of living than their counterparts in South Africa. This is because, with nearly 180 million citizens, Nigeria's population is three times larger than South Africa's. On a per-capita basis, South Africa's GDP numbers are three times larger than Nigeria's. *Id.* We can see now why one Nigerian financial analyst quoted in the BBC news-story called the revisions "a vanity." *Id.* The reason is because, for average Nigerians, their country's surpassing South Africa "doesn't put more money in the bank, more food in their stomach. It changes nothing." *Id.*

55. See JEDRZEJ G. FRYNAS, *OIL IN NIGERIA: CONFLICT AND LITIGATION BETWEEN OIL COMPANIES AND VILLAGE COMMUNITIES* 8-58 (Lit Verlag, 2000) (overview of the country's oil industry, including the evolution of petroleum production as a mainstay of Nigeria's economy).

such as telecommunication and entertainment.⁵⁶ But, as with its labor power, there are notable downsides. The first is the “resource curse” of corruption and an inefficient tax system, arising from excessive dependence on oil products (not minimizing the movement toward diversification in the structure of the economy) that Nigeria shares with other petro-states.⁵⁷

This general problem is then compounded by a factor unique to Nigeria: the conflict in the Niger Delta, major source of the country's oil wealth,⁵⁸ with its narratives of “environmental disaster, economic destitution, and political repression” against oil-producing communities.⁵⁹ The

56. DICKOVICK & EASTWOOD, *supra* note 35, at 585. On telecommunication, one source assesses that “[t]he Nigerian telecommunications sector is among the best performing sectors of the Nigerian economy and one of the fastest growing employers of labor in the country.” Lanre Adedeji, *Telecommunications and the Nigerian Economy*, THE LAWYERS CHRONICLE, <http://thelawyerschronicle.com/telecommunications-and-the-nigerian-economy/> (last visited March 23, 2015). On entertainment, Professors Dickovick and Eastwood observe that the Nigerian film industry, Nollywood, “distributes movies across Africa at a rate faster than Hollywood itself.” DICKOVICK & EASTWOOD, *supra* note 35, at 585.

57. TERRY LYNN KARL, *THE PARADOX OF PLENTY: OIL BOOMS AND PETRO-STATES* 189–220 (Univ. of California Press 1997). Regarding an inefficient tax system, Dickovick and Eastwood elaborate that “[w]ithout effective taxation, citizens may feel disconnected from the state, regarding it as an alien organizational force or seeing it simply as a distributor of resources.” DICKOVICK & EASTWOOD, *supra* note 35, at 54–55. There is little question that this is how many Nigerians view their country. Note that, as Dickovick and Eastwood clarify, the key is *not* the state taxing a lot, but rather taxing efficiently, *i.e.*, taxing successfully and regularly. *Id.* at 54.

58. *See generally* FRYNAS, *supra* note 55; INTERNATIONAL CRISIS GROUP, *AFRICA REPORT NO. 113, NIGERIA: WANT IN THE MIDST OF PLENTY* (July 19, 2006), <http://www.crisisgroup.org/~media/Files/africa/west-africa/nigeria/%20Want%20in%20the%20Midst%20of%20Plenty.pdf>.

59. Larry Diamond, *Foreword*, in ROTIMI T. SUBERU, *FEDERALISM AND ETHNIC CONFLICT IN NIGERIA* x, xv (United States Institute of Peace, 2001). For environmental degradation, Professors O’Neil and his colleagues indicated, citing a U.N. report, that drinking water in some parts of the Delta region contains some 900 times the amount of benzene (a cancer-causing ingredient) deemed safe by the World Health Organization. The same report predicted that cleaning the crude oil residue in the affected areas will take decades and billions in U.S. dollars. *See* PATRICK H. O’NEIL ET AL., *CASES IN COMPARATIVE POLITICS* 724 (W. W. Norton & Co., 4th ed. 2012). Political repression is present because Nigerian governments at both the national and state levels use their coercive authority, including military force, to muffle protests—many of which are peaceful—by oil-producing communities out of apprehension for the negative impact of such actions on oil production. *See* FRYNAS, *supra* note 55, *passim*. An underlying issue in the Niger Delta conflict that goes to the economic destitution of the affected communities is the revenue allocation formula the Nigerian government has applied since the discovery of oil in commercial quantity that the oil-producing communities complain is

trouble in the Niger Delta is an assault on political-civil rights and socio-economic rights as well as a deprivation of the right to economic self-determination, contrary to the injunction of the international bill of human rights that “[i]n no case may a people be deprived of its own means of subsistence.”⁶⁰

These human and natural resource impediments were probably among the reasons why Nigeria ranked low on the list of states “most likely to succeed” as “multilateral internationals” in Professor Brysk’s seminal work on the still small rank of “global good Samaritans.”⁶¹ There is no question that Nigeria faces real disabilities in its infrastructure. Foreshadowed by colonial rule, some of the problems were evident in the early years of independence, deepened during the nearly thirty years of sustained military rule, and have witnessed little alleviation during the fifteen years of the Fourth Republic since 1999.⁶²

However, these problems are *not* destiny. The country is living through the longest stretch of civilian rule since independence. For all its unevenness, democratic rule affords a better canvas than authoritarian military rule for resolution of these issues. Nigeria’s infrastructure for the pursuit of a human rights-based foreign policy is not limited to resources within its borders. Instead, it includes resources outside its borders. On this point, the Economic Community of West African States (“ECOWAS”), an

unfair. From a high of 50% at independence, the size of allocation based on “derivation” (revenue allocation for natural resources, especially oil) has gyrated from 45% to 20% to 0% to 1.5% to 3% to its current 13%, reaching their lowest percentage levels during periods of military rule. See Ayakeme Whisky, *The South-South Position: A Stitch in Time Saves Nine*, VANGUARD (Nigeria), June 5, 2014, <http://www.vanguardngr.com/2014/06/-position-stitch-time-saves-nine>.

60. ICCPR and ICESCR, *supra* note 9, Art. 1, §§1-2.

61. BRYSK, *supra* note 4, at 8-17. These global good Samaritans are badly needed to counteract the U.S.’s slackening leadership of the international human rights movement. See *id.* at 232-34 (characterizing the U.S. as the “deadbeat dad of global governance.”); see also Michael Ignatieff, *Is the Human Rights Era Ending?*, in PERSPECTIVES ON TERRORISM: HOW 9/11 CHANGED U.S. POLITICS 103-06 (Allan J. Cigler ed., Houghton Mifflin Co., 2002) (lamenting that due to the war against terror, “[t]he new element in determining American foreign policy is what assets—bases, intelligence[,] and diplomatic leverage—it can bring to bear against Al Qaeda[,]” rather than the needed U.S. leadership on international human rights); Henkin, *supra* note 6, at 38, n.61 (counseling the U.S. to resume its leading role in international human rights).

62. See generally Aka, *supra* note 44, although its focus is limited to the challenges of judicial (in)dependence under the Fourth Republic since 1999.

economic integration organization that Nigeria led the way in founding in 1975,⁶³ covered in the next section, comes to mind.

Nigeria should rank among the regional “tigers” from the global South that Brysk indicated are aspiring to take their place in the conduct of human rights-based foreign policies.⁶⁴ Countries like Costa Rica, which distinctively punch above their weight in international human rights, “did not require wealth or power to afford the luxury of pursuing a principled foreign policy.”⁶⁵ Global good Samaritans notable for their human rights-based foreign policies, are made, not born.⁶⁶ Instead, as Brysk elaborated, “although some national values and experiences harmonize readily with human rights, foreign policy projection of those norms must be learned and mobilized.”⁶⁷ For Nigeria, the requisite national values harmonizing with human rights that can form the basis for learning would include its experience in peacekeeping and its habit of eschewing the use of force in disputes with neighbors. There is no requirement that Nigeria punch above its weight in applying human rights in external affairs the way “global Good Samaritans” like Costa Rica have impressively done. But it needs to punch within its weight, something it has yet to do. Having shown that Nigeria can use more human rights in its external relations, the next question, to which we now turn, is *how*?

63. Olufemi A. Babarinde, *Regionalism and African Foreign Policies*, in *AFRICAN FOREIGN POLICIES* 215-36 (Stephen Wright ed., Westview Press, 1999).

64. BRYSK, *supra* note 4, at 230. These tigers, none of which is from Africa, are Argentina, Brazil, Chile, and South Korea. *Id.*

65. *Id.* at 118. Judging by population size alone, Costa Rica has 3 million people, compared to Nigeria's 135 million denizens as of 2009 when the Brysk study was published. *Id.* at 8-17.

66. *Id.* at 221. Brysk creatively built the theme of her work on the biblical parable of the Good Samaritan, Luke 10: 25-37 (New International Version). In the parable, Jesus, in answer to the question, “And who is my neighbor?” posed to him by one expert in the law, told the story about a man “going down from Jerusalem to Jericho, when he fell into the hands of robbers” who “stripped him of his clothes, beat him, and went away, leaving him half dead.” A priest passed him by and chose not to be bothered and so too was a Levite, leaving the Samaritan (from a group generally despised) “who took pity on him,” as the one who took care of the robbed stranger in his moment of distress. To Jesus's question, “Which of these three do you think was a neighbor to the man who fell into the hands of robbers?” the legal expert replied, “The one who had mercy on him.” Jesus then admonished him, “Go and do likewise.” Brysk complemented this theme with a 2006 poem datelined Cape Town, South Africa, on the book's frontispiece regarding “the kindness of strangers.”

67. BRYSK, *supra* note 4, at 221.

II. METHODS

This section discusses various methods Nigeria can use to interject human rights-based policies in its foreign affairs. These methods include tools within and outside the country. The discussion that follows is illustrative of the possibilities rather than exhaustive.⁶⁸ For optimum result, these strategies should be pursued synergistically rather than sequentially or prioritized.⁶⁹

A popular saying in Nigeria is that “charity begins at home.”⁷⁰ Nigeria can perform important service for international law just by getting its

68. For example, it does not cover human rights activities in external settings, regional or global. See Oladimeji Talibu, *Multilateral Dimension in the Foreign Policy of a Regional Actor: Study of Nigeria, 1985-2007*, Ph.D. Research Proposal, available at https://docs.google.com/presentation/d/1oruhYVS0gfCsaKG6W624K_Ij_wQtagNPLFj-oiq0TNQ/edit?pli=1#slide=id.p18; Harrison O. Okafor, *The Impact of Multilateralism and Regionalism in Trade Policy Effectiveness in Nigeria*, 2 DEVELOPING COUNTRY STUD. 36 (2012), available at <http://www.iiste.org/Journals/index.php/DCS/article/viewFile/3558/3607> (focusing on trade policy).

69. A discussant at an academic conference in Spring of 2014 where I presented this work thoughtfully advised the sequencing of these methods. The main point against prioritization is simple: given the complexity of the country and the characteristic unpredictability of its leaders, one just does not know which strategy will work for Nigeria’s long-suffering citizenry. The inspiration for this synchronization comes from an arguably far-fetched source (in the sense of the little relationship of that source to human rights in external relations), namely, M. NIGHT SHYAMALAN, *I GOT SCHOOLED: THE UNLIKELY STORY OF HOW A MOONLIGHTING MOVIE MAKER LEARNED THE FIVE KEYS TO CLOSING AMERICA’S EDUCATION GAP* (Simon & Schuster, 2013). Shyamalan glimpsed America’s education gap in 2007 while scouting Philadelphia high schools for his film *The Happening*. His breakthrough moment arrived at a dinner when the chief medical officer of the Penn Presbyterian Medical Center explained that—if strictly adhered to—a regiment of balanced diet, good sleep, exercise, no smoking, and stress management “beats every pill” when it comes to keeping patients healthy. Shyamalan thought there must be similar tenets that would restore the health of the U.S.’s ailing schools. After four years of researching and consulting with experts, he found them, all five of them sequentially, devoid of any prioritization: No Roadblock Teachers, The Right Balance of Leadership, Feedback, Smaller Schools, and More Time in School. *Id.* at 197-98. Similarly, for optimum result, reforms in Nigeria need to be synergized with several factors occurring simultaneously.

70. In Nigeria, like in many other African societies, proverbs are the “jewel of speech,” “the oil with which words are eaten,” and a creative complement to the oral tradition that many Nigerian writers use to infuse concreteness into otherwise abstract topics. MABEL AJALA, *NIGERIAN PROVERBS AND WISDOM EXPLAINED* 7-8 (Seaburn Publishers, 2007) (the second quote is attributed to celebrated Nigerian writer Chinua Achebe). The idiom, *charity begins at home*, an admonishment to the do-gooder to first be the change agent he or she wants to see in others, is one of these numerous proverbs.

human rights house in order. Because of its status as the most numerous black state in the world, human rights peace in the country is a boon for international human rights. The reverse is true when violations are rife. For example, the tragic humanitarian fallout of the Nigerian civil war from 1967 to 1970 vastly occupied the international community's attention and generated debate about excessive use of force by the Nigerian central government, in its attempt to suppress the secession of Eastern Nigeria, that till date still rages within the country.⁷¹ A similar human rights crisis today, in a country that has more than doubled its population in the forty-five years since the war and within the context of a post-Cold War world marked by increased globalization, would divide the world and occupy its attention more.

Getting its human rights house in order mandates that Nigeria maintain civil-democratic rule, in place in the country since 1999, no matter how arguably low quality. Abuses of human rights in the country reach their apogee during periods of military rule.⁷² Concededly, some of the gains Nigeria made in the integration of human rights in foreign affairs, including peacekeeping missions, occurred during eras of military rule. However, the occurrence is testimony to the dominance of the military in the country's politics that stretched for nearly thirty years. To play on the popular saying by Winston Churchill, democracy is the worst form of government in Nigeria, except for all the other forms tried in the country before 1999.⁷³

For one example in foreign relations, see GULLIVER'S TROUBLES: NIGERIA'S FOREIGN POLICY AFTER THE COLD WAR 2 (Adekeye Adebajo & Abdul Raufu Mustapha, eds., Univ. of KwaZulu-Natal Press, 2008) (lamenting the disconnect between the country's high-minded aspirations for a leadership role abroad juxtaposed with the petty ambitions, kleptomania, and small-mindedness of some Fourth Republic leaders).

71. See CHINUA ACHEBE, *THERE WAS A COUNTRY: A PERSONAL HISTORY OF BIAFRA* 209-11, 228-39 (Penguin Press, 2012); CHIMAMANDA N. ADICHIE, *HALF OF A YELLOW SUN* (Alfred A. Knopf, 2006) (work of fiction based on the Nigerian civil war from 1967 to 1970, sometime referred to as the Biafra War, after the new name of the former Eastern Region that attempted unsuccessfully to secede from Nigeria).

72. See Chinonye Obiagwu & Chidi Anselm Odinkalu, *Nigeria: Combating Legacies of Colonialism and Militarism*, in *HUMAN RIGHTS UNDER AFRICAN CONSTITUTIONS: REALIZING THE PROMISE FOR OURSELVES* 211-50 (Abdullahi Ahmed An-Na'im ed., Univ. of Pennsylvania Press, 2003) (including military rule as a factor responsible for human rights violations in the country).

73. See WINSTON CHURCHILL, *CHURCHILL BY HIMSELF: THE DEFINITIVE COLLECTION OF QUOTATIONS* 574 (Richard M. Langworth, ed. 2008) (emphasis added) ("Many forms of Government have been tried and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that *democracy is the worst form of Government except for all those other forms that have been tried from time to time.*").

Using civilian rule as irreducible canvas, governmental leaders must next move to improve all three categories of human rights without exception: political and civil rights (or political-civil rights),⁷⁴ social, economic, and cultural rights (or socioeconomic rights),⁷⁵ and collective rights, including the right to self-determination. We take the three categories in turn.

Beginning with political-civil rights, although the environment for free speech has improved substantially under civilian rule, inter-ethnic conflicts and challenges to governmental authority remain unabated. A plausible explanation of the occurrence is that disagreements suppressed during the long years of military rule, are coming to the fore, taking advantage of the freer air for expression that civilian rule affords. The human rights issue these matters present is the failure or inability of the government to respond to these crises, including the bloody Boko Haram religion-based insurgency since 2009,⁷⁶ in a human rights sensitive manner.⁷⁷

74. To disaggregate these guarantees, political rights are rights of individuals to participate in political life, including the right to political speech, the right to vote, and the right to join political associations. DICKOVICK & EASTWOOD, *supra* note 35, at 615 (glossary). In contrast, civil rights are the rights of individuals to participate in civic life, such as freedoms of assembly, speech, access to information, and equal access to institutions. *Id.* at 609 (glossary). Political-civil rights are contained in the UDHR and elaborated in the ICCPR.

75. These rights are closely related guarantees that can equally stand a bit of disaggregation. At the core of social rights is the right to an adequate standard of living. UDHR, Art. 25; ICESCR, *supra* note 9, Art. 11. Enjoyment of these rights requires, at a minimum, that the individual be afforded basic subsistence rights, such as the right to adequate food and nutrition, clothing, and housing, and the right of protection and assistance to the family. ICESCR, Art. 10. To enjoy these social rights, the individual needs certain economic rights, including the right to property (UDHR, Art. 17), right to work (UDHR, Art. 23; ICESCR, Art. 6), and the right to social security (UDHR, Arts. 22 and 25; ICESCR, Art. 9). Cultural rights include the right to take part in the cultural life of one's community, and the right to enjoy the benefits of scientific progress and its application. It is closely linked to rights like the right to education, which also is an essential element in social and economic rights—an occurrence that speaks to the interrelatedness of these three subcategories. For detailed exploration of these rights, see Asbjorn Eide, *Economic, Social, and Cultural Rights in Human Rights*, <http://www.wcl.american.edu/humright/hracademy/documents/Eideclass1-Economicandsocialrightsashumanrights-AsbjornEide.pdf>.

76. The mission of the group is to stem the influence of Western education, which it assesses as “evil,” through the imposition of sharia law all across the land. The group has killed more than 5,000 people, at least 2,000 in the first half of 2014, with more than 6 million people affected and more than 300,000 displaced. Prodded by the Nigerian government and human rights groups, the U.S. government under Barack Obama, in November of 2013, finally declared Boko Haram a terrorist organization. On April 15, 2014, the group kidnapped more than 300 girls from their school dormitory in Chibok, a

For socioeconomic rights, Nigerian governments at all levels can do more to improve living standards in a country where about two-thirds of the population still live below the poverty line,⁷⁸ and extend to their long-suffering residents “the dividends of democracy.”⁷⁹ Although a stalwart of NEPAD, the economic rationalization outfit referred to in the opening pages of this Article, Nigeria has yet to live up to the mission of the organization embedded in poverty alleviation.⁸⁰ One way to stir Nigerian governments from their slumber on economic rights would be to make these rights—access to education, healthcare, food, shelter, clean water, and so forth—justiciable under the Nigerian constitution. This would give citizens a legal reference point, currently non-existent, to bring lawsuits for breaches of these rights when they are violated, as has repeatedly been the case since the country's independence in 1960.

For collective rights, the Nigerian government can do more to decentralize power. Such devolution is important, given the status of Nigeria as a patchwork of more than 250 ethnic enclaves,⁸¹ some of which, like the Igbo, Hausa-Fulani, and Yoruba, with populations running into tens of millions, are sizable enough to form their own separate countries. For how much longer can the country continue to buck the global trend toward power-sharing and devolution? Why would a country like Nigeria, included

remote town in northeastern Nigeria in an action that finally drew the attention of the international community to its terroristic activities. See Aka, *supra* note 44, at 37–42.

77. See Anne Gearan, *Kerry, in Africa, Keeps Focus on Middle East*, WASHINGTON POST (May 25, 2013), http://www.washingtonpost.com/world/kerry-criticizes-nigeria-on-human-rights/2013/05/25/6bc928ca-c510-11e2-9642-a56177f1cdf7_story.html (reporting on a U.S. warning, delivered by U.S. Secretary of State John Kerry at an African summit meeting to the Nigerian government not to condone human rights violations committed by its own forces fighting the Boko Haram militants; specifically, Kerry said he has advised the Nigerian government on the imperative of Nigerian troops adhering to the highest standard and not themselves engaging in human rights violations, quipping: “one person’s atrocity does not excuse another’s”); Michael Martinez, *Kerry: Nigeria Acknowledged Human Rights Abuses in Terror Fight*, CNN, May 25, 2013, updated 1:49 PM ET, www.cnn.com/2013/05/25/world/africa/nigeria-kerry-human-rights (defending the Nigerian government’s right to defend itself against terror groups, but simultaneously taking exception to its human rights record in the fight against terror).

78. Okonjo-Iweala, *supra* note 52.

79. Philip C. Aka, *The “Dividend of Democracy”: Analyzing U.S. Support for Nigerian Democratization*, 22 B. C. THIRD WORLD L. J. 225–279 (2002).

80. Aka, *supra* note 24, at 89.

81. See *Nigeria*, in *ETHNOLOGUE: LANGUAGES OF THE WORLD* (M. Paul Lewis, ed., 17th ed. SIL Int’l, 2010).

in comparative politics among examples of a federal system,⁸² continue to *operate*, as it has done since the end of the civil war in 1970, like a unitary system, at a time unitary systems like China and the United Kingdom, through extensive devolution of power to constituent units, are “seek[ing] the benefits of decentralized government without necessarily establishing federalism[?]”⁸³

On implementation domestically, Nigerian governments at all levels need to translate into domestic laws the numerous regional and international human rights instruments Nigeria is a party to.⁸⁴ For implementation of collective rights, Nigeria needs a reshaped union of no more than six federating units (revolved around the country’s six geopolitical zones), compared to the current proliferation of thirty-six states plus the federal capital territory in Abuja. Lastly, for ethnic peace in the Niger Delta and other trouble spots in the country, the national government must heed the injunction in the international bill of human rights, regarding economic self-determination, that “[i]n no case may a people be deprived of its own means of subsistence.”⁸⁵

With “charity” duly served at home, Nigeria could then look beyond its national borders in its pursuit of a human rights-based foreign policy. A ready and efficient tool—in its own right a monument of the application of human rights in external affairs—that Nigeria could deploy is the Economic Community of West African States and its affiliated institutions.⁸⁶ Nigeria is one of fifteen states that constitute ECOWAS. The others are: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Senegal, Sierra Leone, and Togo.⁸⁷ With over

82. See, e.g., DICKOVICK & EASTWOOD, *supra* note 35, at 179 (map of federal systems around the world). Based on the map, Nigeria is one of only four federal countries in Africa, the others being Comoros, Ethiopia, and South Africa. *Id.*

83. DICKOVICK & EASTWOOD, *supra* note 35, at 179.

84. See University of Minnesota, *supra* note 20.

85. ICCRP and ICESCR, *supra* note 9, Art. 1, § 2.

86. ECOWAS is modeled after the European Union. See Chieke Ihejirika, *ECOWAS: The Dilemma of Integration in a Fragmented Sub-Region*, available at <http://www.kckcc.edu/docs/default-source/ejournal/ecowas.pdf?Status=&sfvrsn=6f> (depicting ECOWAS as “a regional common market, modeled after the European Economic Community . . . which metamorphosed into what is now known as the European Union”); Ademola Bamidele, *West Africa: ECOWAS and Sub-Regional Devt (I)*, AL-LAFRICA, July 17, 2013, <http://allafrica.com/stories/201307180094.html> (pointing out that “the idea behind an economic body for the [West African] sub-region was modelled after the European Union.”).

87. See Economic Community of West African States (ECOWAS), *ECOWAS Member States*, <http://www.ecowas.int>. Altogether, the organization has four affiliate institutions: the Secretariat (changed into a Commission in 2006), Community Parlia-

fifty percent of the community's population, a GDP larger than the combined GDP of all the other ECOWAS states put together, and contributor of nearly one-third of the community's annual budget, Nigeria is the undisputed linchpin of ECOWAS.⁸⁸ The headquarters of the organization is in Abuja, Nigeria's federal capital territory and so too are some of the organization's affiliate institutions, such as the Community Court of Justice.

Pre-1999, Nigeria, with the support of other members of the alliance, became known for using ECOWAS for peacekeeping.⁸⁹ Since 1999, under Nigeria's Fourth Republic, the Community Court of Justice of the organization has been the scene of revitalization and activity. The Court was created in 1991 to resolve disputes over the rules of economic integration.⁹⁰ In 2005, the jurisdiction of the Court was importantly broadened to include determination of cases of human rights violations "that occur in any member state."⁹¹ Ever since, the Court has assumed a level of activity in the adjudication of human rights issues second to none in Africa that legal scholars have praised.⁹²

Nigerian Fourth Republic leaders helped to instigate the grant of increased authority for the court⁹³ and they have shown no indication so far that they disapprove its active human rights jurisprudence.⁹⁴ In a nutshell, Nigerian politicians under the Fourth Republic probably calculated that it was in the country's national interest to support a permanent court (rather than an *ad hoc* tribunal) that adjudicates the trade and related disputes of

ment, the Community Court of Justice, and the ECOWAS Bank for Investment and Development ("EBID"). See Economic Community of West African States ("ECOWAS"), *ECOWAS in Brief*, http://www.comm.int/sec/index.php?id=about_a&.

88. Femi Aribisala, *ECOWAS Imperative for Nigeria*, NIGERIA DEV. & FINANCE FORUM, available at <http://www.nigeriadevelopmentandfinanceforum.org/PolicyDialogue/Dialogue.aspx?Edition=63> (last visited Feb. 28, 2015).

89. See ADEBAJO, *supra* note 18, at 249-50.

90. One of those disputes was the "tit for tat" involving the expulsion of supposed illegal aliens from member countries that Nigeria conducted during a period of economic difficulties under its Second Republic from 1979 to 1983, in seeming retaliation of Ghana's own expulsion of Nigerian migrant workers earlier on. See JEAN-MARIE HENCKAERTS, *MASS EXPULSION IN MODERN INTERNATIONAL LAW AND PRACTICE* (Martinus Nijhoff Publishers, 1995) (study of the problems of mass expulsion of aliens, migrant workers, and stateless persons in international law, including several case studies, one of them Nigeria's mass expulsion of migrant workers analyzed on pp. 66-71 of the work).

91. Karen J. Alter et al., *A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice*, 107 AM. J. INT'L L. 737-79 (2013).

92. *Id.*

93. *Id.* at 747.

94. *Id.* at 758-61.

economic integration, while simultaneously dealing with human rights issues within national borders that could militate against regional security if left unaddressed.⁹⁵

ECOWAS holds great potential as an efficient tool for human rights-based foreign policy—not just for Nigeria, but also for the other members of the organization. In the pursuit of its foreign policy, Nigeria has shown a decided preference for multilateral forms (as opposed to bilateral dealings), consistent with its status as a developing nation. A revamped ECOWAS helps the country maintain that preference with the added benefit as an organization within its zone of influence that Nigeria leads—compared to broader forums, such as African regional and U.N. global institutions.

III. REBUTTABLE OBJECTIONS

There are three possible objections, each unavailing, to the argument for an increased application of human rights in Nigeria's external affairs made in this study. The first objection is whether the elevated requirements of human rights in foreign affairs will not be an overextension for developing countries like Nigeria, whose hands are already full, struggling to secure these super-rights at the domestic level.⁹⁶ The answer to that objection is that infusing more human rights in foreign affairs will facilitate the work of democracy at home, while at the same time enriching, adding color, and providing a higher shooting target for Nigerian leaders and foreign policy officialdom in their pursuit and vindication of national interests.⁹⁷ Even countries like Costa Rica, without the advantage of size and resource endowments that Nigeria enjoys, demonstrate that implementing human

95. *Id.* at 772-72.

96. As Nigerians would put it in Pidgin English, person go drink tea first before him drink over-tea (corruption of Ovaltin, a delicious cocoa brew). The answer to such comment is that, contrary to any supposed trade-off between tea and over-tea, ordinary Nigerians have neither tea nor over-tea, judging by the high level of poverty (two-thirds of Nigerian are abjectly poor, maintaining themselves on \$1 a day) in a supposedly oil-rich country. *See, e.g., Nigerians Living in Poverty Rise to Nearly 61%*, BBC NEWS, Feb. 13, 2012, <http://www.bbc.com/news/world-africa-17015873>.

97. We live in a world where the responsibility to protect (referred to colloquially as "R2P"), has emerged as a norm. FORSYTHE, *supra* note 4, at 4-5. Under this shaping rule, "while sovereign states ha[ve] the primary responsibility for protecting human rights in their jurisdictions, if [these] states prove[] unwilling or unable to prevent gross violations, outside parties ha[ve] the responsibility to become involved." *Id.* Countries which make serious efforts to incorporate human rights into their foreign affairs stand a better chance of shouldering this added burden, compared to states which do not.

rights-based foreign policies can deepen democracy at home.⁹⁸ Nations unable to do good to “strangers” abroad will have no difficulty finding maleficent strangers at home.⁹⁹

Second, the combination of human rights at home and abroad resonates with the inseparability, indivisibility, and interdependency of these rights. Human rights is one area that leaders are not allowed to pick and choose because of the spillover effect of human rights of a manner that defies categorization.¹⁰⁰ Just as the spread of human rights forbids demarcation between political-civil rights and socioeconomic rights, today countries must infuse their relations with other countries with human rights, rather than limit themselves to enforcement of human rights domestically.

A third possible objection relates to the complaint about unclosed gap between domestic and foreign policies connected to the argument of this Article. The objector will argue that even democratic heavyweights like the

98. BRYSK, *supra* note 4, at 95-118, 116-117. In a play on the children story, Thomas the Tank Engine, Brysk called Costa Rica “The Little Country that Could.” To the question regarding the extent the elements of Costa Rica’s experience transfer to other developing nations, Brysk responded that the country has “fixed legacies or resources” that are not available to any country. *Id.* at 118. However, Costa Rica also possesses “latent resources,” factors amenable for adoption by other countries, all of which “can be assisted externally,” and can “help to strengthen democracy at home as well as abroad.” *Id.* These resources include “persuasion by ideas, openness to civil society, socializing participation in international institutions, dedicated diplomats, and alternative regional and global niches.” *Id.*

99. See KING, *supra* note 33, at 3-31, 237-41 (commenting on “relations with strangers,” external as well as internal). Regarding “internal strangers,” King instructively points out that “[t]he immense diversity of Nigeria has been a source of weakness as well as strength[,]” adding that “Nigerian nationalism constantly seeks to reconcile differences that are a source of estrangement among citizens[,]” citing the Igbo experience, including the civil war from 1967 to 1970. *Id.* at 239.

100. Rebutting the argument that poor citizens in developing world prefer economic development to political and civil rights, the Nobel Prize winner Amartya Sen pointed out that the conceptualization and comprehension of “economic needs” require the exercise of political and civil rights that a genuine democratic system embeds. He explained that a proper understanding of the content and force of economic needs require discussion and exchange that political-civil rights make possible. Sen attributes the sharp decline in fertility rates in some of India’s more literate states, such as Kerala, to the open dialog and public discussion on an issue tied to economic development that would not occur without political-civil rights. See Amartya Sen, *Democracy as a Universal Value*, 10 J. DEMOCRACY 3-17 (July 1999); see also Amartya Sen, *Importance of Democracy*, in READINGS IN COMPARATIVE POLITICS: POLITICAL CHALLENGES AND CHANGING AGENDAS 102-12 (Mark Kesselman & Joel Krieger eds., Houghton Mifflin Co., 2006) (maintaining that poor people care about democracy and political rights just as they do about economic, cultural, and social rights).

U.S. have such gaps.¹⁰¹ There is some merit to that argument; no one can minimize the setback to international human rights posed by the abdication of U.S. leadership in the field, before the terrorist attacks of September 11, 2001,¹⁰² that has lingered into the period of the Obama presidency even with the changed tone in U.S. human rights policy since Barack Obama took office in 2009.¹⁰³ Conceivably, it is this occurrence that necessitated the scout for “global good Samaritans” to fill some of the gap in U.S. leadership.¹⁰⁴ But such comparison of Nigeria to the U.S. could be overstretched. The U.S. is a nation “in search of itself” in an ongoing attempt to realize its founding principles,¹⁰⁵ and a state that played an instrumental role in the evolution of the modern human rights movement,¹⁰⁶ drawing on a natural rights doctrine in its Declaration of Independence that goes back to

101. An exception perhaps would be Jimmy Carter, whose administration worked strenuously to increase the influence of human rights in U.S. foreign policy. *See* Carter, *supra* note 4, at 49-61.

102. Henkin, *supra* note 6, at 38, n.61.

103. Philip C. Aka, *The Country Reports on Human Rights Practices and U.S. Human Rights Policy in a Changing World*, PERSP. ON GLOBAL DEV. & TECH 238, 241 (2015).

104. *See* BRYSK, *supra* note 4, *passim*.

105. THEODORE H. WHITE, *AMERICA IN SEARCH OF ITSELF: THE MAKING OF THE PRESIDENT 1956-1980* (Harper & Row 1982). President Barack Obama made this same point in an address at the 66th session of the United Nations General Assembly on September 14, 2014, in New York, where he advised U.S. enemies not to exploit the troubles in Ferguson, Missouri, to deflect attention from their own human rights abuses. *See* The White House, Office of the Press Secretary, *Remarks by President Obama in Address to the United Nations General Assembly* (Sept. 28, 2014), <http://www.whitehouse.gov/the-press-office/2014/09/24/remarks-president-obama-address-united-nations-general-assembly> [hereinafter Obama U.N. address]. Ferguson gained notorious international attention when on August 9, 2014, a white police officer shot an unarmed black teenager to death, sparking widespread protests and civil unrest that went on for months. *See, e.g.,* Dara Lind et al., *An Uneasy Peace in Ferguson*, VOX, Aug. 21, 2014, <http://www.vox.com/2014/8/11/5988925/mike-brown-killing-shooting-case-ferguson-police-riots-st-louis>. Obama quipped: “I realize that America’s critics will be quick to point out that at times we too have failed to live up to our ideals; that America has plenty of problems within its own borders. This is true.” Obama U.N. address, *supra*. However, unlike many in the world, within “the open space of democracy,” “America is a country that has steadily worked to address [its] problems, to make [its] union more perfect, [and] to bridge the divides that existed at the founding of this nation.” *Id.*

106. MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (Random House 2001).

the British philosopher John Locke.¹⁰⁷ For all its enormous potentials, Nigeria still has a long way to go in these efforts, a shortfall that necessitates academic and policy-oriented attention of the type this Article fosters.

CONCLUSION

This study was designed to accomplish multiple goals in one fell swoop: tie in Nigeria, a key state in Africa, into the literature on human rights in comparative foreign policy;¹⁰⁸ and contribute to the campaign to treat human rights as genuine national interest, rather than a sporadic appendage to general foreign policy,¹⁰⁹ using the country as window into the world.

Nigeria must increase its participation in the international human rights regime by more consciously applying human rights in its foreign affairs. The country needs a human rights policy with more depth and robustness to match its aspirations for major power status.

Although human rights policy is an integral component of general foreign policy, the application of human rights in foreign policy is a more demanding task that Nigeria needs to embrace. An enhanced and more systematic application of human rights in Nigeria's foreign relations will:

- remove the solecism of abuses at home, and a nominal commitment to international law abroad that currently marks its human rights policy,
- bring increased harmonization to domestic and foreign policies, and
- inject a more credible accent to its foreign policy initiatives.

When was the last time that a Nigerian leader used the language of human rights in formulating domestic or foreign policy?¹¹⁰ Nigerian governments at all levels, civil society (non-governmental sector), and the gen-

107. See Philip C. Aka, Review of CRIMINAL LAW REFORM AND TRANSITIONAL JUSTICE: HUMAN RIGHTS PERSPECTIVES FOR SUDAN (Lutz Oette, ed., Ashgate Publishing, 2011), 59 AFR. TODAY 131, 135-36, n.1 (2013).

108. In their seminal volume, Professor Forsythe and his colleagues noted, "With an unlimited budget and a multi-volume project, we could have added numerous states that merit study: France, Norway, Germany, *Nigeria*, Kenya, Mexico, Brazil, Pakistan, Israel, the Philippines, etc." David P. Forsythe, *Introduction*, in HUMAN RIGHTS AND COMPARATIVE FOREIGN POLICY 1, 17 (David P. Forsythe, ed., United Nations University Press, 2000) (emphasis added).

109. DONNELLY, *supra* note 1, at 139-47.

110. The insight that inspires this question is South Africa where, at one point under Nelson Mandela, a heated exchange ensued regarding application of human rights in the country's foreign policy. See Tiyanjana Maluwa, *Human Rights and Foreign Policy in Post-Apartheid South Africa*, in HUMAN RIGHTS AND COMPARATIVE FOREIGN POLICY, *supra* note 108, at 250-75.

eral public must get into the habit of using human rights in their debates on domestic and international issues.¹¹¹ Because Nigeria mirrors some of the problems Africa faces,¹¹² talk about any “renaissance” in the continent in this century¹¹³ will remain just talk until the country embraces the type of serious reforms at home and abroad that only the international human rights approach makes possible.

111. Chidi A. Odinkalu, *Why More Africans Don't Use Human Rights Language*, 2 HUM. RTS. DIALOGUE (Dec. 1999), available at www.carnegiecouncil.org/publications/archive/dialogue/2_01/articles/602.html.

112. OLADIMEJI ABORISADE & ROBERT J. MUNDT, *POLITICS IN NIGERIA* xi-xii (Longman, 2d ed. 2002) (“Neither Nigeria nor any other country can stand for all of Africa, for Africa is marked by great diversity. Still, if to know Nigeria is not necessarily to know Africa, it is a good place to begin, for there will be little that is surprising in politics elsewhere on the continent to one who is well acquainted with the Nigerian experience.”).

113. The notion of *renaissance* is one anchored in Africa’s pan-Africanist past, back to the very beginning of the last century, that some African intellectuals, most prominently Thabo Mbeki, former South African president, have resurrected. In a speech, “I am African,” marking this recent movement, that he gave in Cape Town, South Africa, on May 8, 1996, Mbeki stated that to make the 21st century the century for Africa the continent must, first, “capture the intellectual space to define its future and therefore the imperative to develop its intellectual capital.” *Quoted in Lazarus Sauti, Thabo Mbeki's Legacy to Africa*, HERALD (Zimbabwe), Sept. 16, 2013, <http://www.herald.co.zw/thabo-mbekis-legacy-to-africa/>. Next, it must “rebuild and sustain [its] universities and other centers of learning, attract back to Africa the intelligentsia that has migrated to the developed North, build strong links with the intelligentsia in the African Diaspora and give” these individuals “the time and space they need to help” shape the future of Africa. *Id.*